IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 11029 of 1994
For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMAN M PARMAR

Versus

ORIENTAL INSURANCE CO. LTD.

Appearance:
1. Special Civil Application No. 11029 of 1994
MR AM RAVAL for Petitioner No. 1
MR DIPAK C RAVAL for Petitioner No. 1
MR UDAY R BHATT for Respondent No. 1-2
MS NITA U BHATT for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 01/12/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the incorrect recording of his date of birth in his service record by the respondents-Authorities. According to the petitioner, the correct date of birth of the petitioner is 26th September 1957 as per the record of the Birth Registering Authority of the Ahmedabad Municipal Corporation and also as per the record of the Vaccination Department of the Ahmedabad Municipal Corporation (Annexure "B" and "C"). The incorrect date of birth of the petitioner was recorded by the respondents-Authorities on the basis of the school

leaving certificate which mentions the date of birth of the petitioner as 9th February 1956. According to the petitioner, the said date of birth is of his elder brother, Parmar Jagdishbhai, and, not of the petitioner. Even as per the application for employment also, the date of birth of the petitioner is 26th September 1957 and, in spite of that, there appears to be incorrect recording of the date of birth of the petitioner by the respondents-Authorities.

2. The petitioner was appointed as Assistant on 1st April 1986 and, thereafter, on 1st October 1986, he came to be confirmed on the said post. On the first available opportunity, when the petitioner came to know about the incorrect recording of the date of birth of the petitioner, he made a representation dated 28th February 1994, i.e. within seven years and ten months of his entry into the service with the respondents. Along with the said representation, the petitioner has produced all the relevant documents, namely, the application for employment, which shows the date of birth of the petitioner as 26th September 1957, and the extracts of birth register maintained by the Ahmedabad Municipal Corporation mentioning the date of birth of the petitioner as 26th September 1957, and, further, the extract of the record of the Superintendent of Vaccination of the Ahmedabad Municipal Corporation, which shows the date of birth of the petitioner as 26th September 1957. The petitioner has, therefore, submitted that the correct date of birth of the petitioner is 26th September 1957, and not 9th February 1956, as recorded by the respondents-Authorities.

3. However, the said representation of the petitioner was decided by the respondents-Authorities vide order dated 6th May 1994 (Annexure "H"). The said order dated 6th may 1994 is challenged in the present petition under Article 226 of the Constitution of India mainly on the ground that the said decision is a case of non-application of mind by the Authority of the relevant material produced by the petitioner to register his date of birth as per the relevant documents submitted by the petitioner in the form of the application for employment, extracts of birth register and the record of the Vaccination Department and, by not passing a reasoned order, the respondent-Authority has acted in an arbitrary manner and, therefore, suitable directions may be issued to the respondents to enter the correct date of the petitioner as 26th September 1957 in the service record of the petitioner.

4. The learned advocate for the respondents, Mr. Uday Bhatt, initially, submitted before the Court that he has conveyed to the respondents to look into the matter and to consider the representation of the petitioner in light of the material evidence produced by the petitioner and to take an appropriate decision. The matter was, therefore, adjourned for this purpose from time to time.

4.1 However, today when the matter is called out for final hearing, the learned advocate for the respondents, Mr. Uday Bhatt, is unable to produce any decision of the respondents with regard to the representation of the petitioner and the grievance about incorporating correct date of birth, i.e. 26th September 1957 in the service record of the petitioner. He further submitted that, if appropriate directions are given, the respondents-Authorities will reconsider the case of the petitioner and will pass appropriate orders in accordance with law.

5. The learned advocate for the petitioner has submitted that the issue on hand is squarely covered by the decision of this Court in the case of Hansabehn v. State of Gujarat, reported on 1993 (2) GLH p.402 and the decision of the Apex Court in the case of Birad Mal Singhvi vs. Anand Purohit, reported in AIR 1988 SC p.1796 and, therefore, it is urged that, in light of the aforesaid decisions, he has no objection if appropriate directions are given to the respondents-Authorities with regard to the grievance of the petitioner.

6. Having heard the learned advocates for the parties and on going through the record, it is apparent that it is not a case that, at the fag end of the service, the employee has agitated his grievance about the date of birth, but, after seven years of his entry in the establishment of the respondents, the petitioner, on finding about the incorrect recording of his date of birth, as 9th February 1956, in stead of 26th September 1957, made a detailed representation along with relevant documents to the respondents, and the same was not considered by the respondents in its true perspective, and a non-speaking order dated 6th May 1994 was passed by the respondents and, therefore, the respondents are required to reconsider their decision afresh.

6.1 Therefore, in view of the submission made by the learned advocate for the respondents that the case of the petitioner will be reconsidered on the basis of the evidence produced by the petitioner with regard to his correct date of birth, it is not necessary to deal with

the matter any further.

7. The respondents are, therefore, directed to reconsider the claim of the petitioner about his correct date of birth on the basis of the documentary evidence produced by the petitioner in its true spirit and the respondents shall pass an order accordingly within the period of three months from the date of receipt of writ of this order. It is open to the petitioner to make a detailed representation, in addition to the one already submitted by him, to the respondents, forthwith, along with the relevant materials and authority of law on this point.

8. With the aforesaid observations and directions, this petition is disposed of accordingly, with no order as to costs.

(Anant S. Dave, J.)
(swamy)